

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

State of Rajasthan Vs. Judge, Labour Court,
and Ors. Jodhpur and Anr.

D.B. SPEICAL APPEAL (W) NO. 619/2001
Under Article 225 of the Constitution
of India against the Judgment dated
22.3.2001 passed by the Hon'ble Mr.
Justice V.G. Palshikar in S.B. Civil
Writ Petition No. 2412/95 State of
Rajasthan and Ors. Vs. Labour Court,
Jodhpur.

Date of Judgment :: 28.3.2007

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr.S.K. Vyas, Government Advocate
Mr.Vijay Mehta, for the respondents.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dated 22.3.2001 dismissing the writ petition filed by the appellants challenging the award of the Labour Court, Jodhpur dated 13.1.1995. The respondent-workman was employed as a daily rated workman in work-charged establishment of Public Health and Engineering Department of the State w.e.f. 1.10.1970. From 1.10.1970 to 30.4.1971 the

petitioner was discharging duties of Store Munshi and was being paid Rs.105/- per month. The workman has approached the Labour Court under Section 33C (2) for quantifying the emoluments to which the workman claimed to be entitled for the aforesaid period. According to the workman, Store Munshi's pay ought to have been Rs.223/- per month and not Rs.105/- per month as was being paid to him. In his affidavit, it is stated that right from his appointment, he was discharging the function of Store Munshi.

In reply to the workman's claim, the aforesaid facts were admitted by the employer but the claim was objected on the ground of delay which was not accepted by the learned Labour Court and in terms of admitted facts, the workman was entitled for emoluments @ Rs.223/- per month. The directions were issued to pay the difference of emoluments between the entitled remuneration and actual remuneration paid to the workman.

In terms of the aforesaid order, the workman was paid the amount of such difference and in his service record, he was shown to be employed in the pay-scale of Rs.110-230 w.e.f. 1.4.1970.

The State of Rajasthan has issued an

order on 1.12.1972 that those persons working on work charged establishment as on 31.3.1971 as Store Keeper or Mohareer Munshi and Time Keeper or a person who worked at workcharged establishment in the pay scale of Rs.110-230 and that he was holding the minimum educational qualification required for Lower Divisional Clerk (LDC) on 31.3.1971 could be appointed against 34 posts newly created in the cadre of LDC. As at the time the directions were issued by the Government, the respondent-workman was drawing pay of Rs.105/- only which was less than minimum of the pay scale, he was not given the benefit of the said directions.

However, after the workman's claim that he was functioning on the post of Store Munshi from 1.4.1970 to 30.4.1971 and he was entitled to pay in the pay scale of Rs.110-230 w.e.f. that date was accepted by order dated 6.9.1984 in pursuance of which he was shown to be entitled for emoluments in the pay-scale of Rs.110-230, he fulfilled all the requisite conditions to get the benefit of Government order dated 1.12.1972 w.e.f. 1.4.1970.

He raised claim to be absorbed as LDC inter alia on the ground that the person who were lower in the rank and junior to him in the work

charged establishment have been absorbed as LDC against newly created posts and he fulfilled all the conditions as on the date consideration of such absorption became due and he claimed that he was employed as a Store Munshi on 31.3.1971 and was also drawing emoluments in the pay-scale of Rs.110-230. He further stated that he has passed matriculation in the year 1967 and certificate to this effect was already on record.

This claim was not responded to and ultimately a dispute having been raised, the same was referred to the Labour Court, Jodhpur about the workman grievances relating to his non-absorption as LDC w.e.f. 1.4.1971 when person, junior to him was absorbed. In this claim, the workman has pointed out the aforesaid facts and stated that until the orders were passed by the learned Labour Court he was not given the benefit of pay-scale of Rs.110-230 due to department's mistake and he was given the same only after orders were passed by the learned Labour Court. As a result of passing of order, he fulfilled first two conditions of being absorbed as LDC in the department on newly created 34 posts and since minimum qualification of LDC being matriculation he also fulfilled the third condition required for absorption on the relevant date. He drew attention to the case of one Mr.

Manmohan Singh, who was junior to him but who has been made regular LDC w.e.f. 1.4.1971.

It was contended by the employer that the order dated 1.6.1984 was not relating to making the petitioner regular in the pay-scale of Rs.110-230, it was merely for determining entitlement to difference in emoluments to the workman and that he did not hold educational qualification. However, it was agreed by the employer in their return that the Executive Engineer, City Division, Jodhpur had recommended to accept the case of the workman but the same was not accepted because as on 31.3.1971, the workman did not fulfill the requisite conditions. The respondent workman was made regular LDC w.e.f. 1.4.1989 and since the dispute has been raised after he is recommended as LDC he is not entitled for relief.

Learned Labour Court found as fact that the workman held the educational qualification for holding the post of LDC since 1967 when he passed matriculation examination. It also held that the effect of the order of 1.6.1984 in favour of the respondent workman was that he must be deemed to be as Store Munshi as on 31.3.1971 and drawing pay in the pay scale of Rs.110-230 as on that date which was necessary for the purpose

of considering his case for being appointed as LDC. Considering that Manmohan Singh, who was situated in the like circumstances, as the aggrieved workman in the matter of his first appointment and his position as on 31.3.1971 was at par with the petitioner's case and he was also directed to be made regularised w.e.f. 1.4.1971 when Manmohan Singh was given appointment on regular post w.e.f. 1.4.1971.

All these findings of facts were not liable to be interfered by the learned Single Judge in exercise of power under extra-ordinary jurisdiction besides the fact that there is no dispute about these facts. Though we are of the opinion that the learned Single Judge was not right in dismissing the writ petition on the ground that petition raises disputed questions of fact. Be that as it may, since there is no reason to interfere in the award of the learned Labour Court, the matter does not require interference on the facts found by the learned Labour Court.

The appeal is accordingly dismissed. The award may be implemented, if not already implemented, within three months.

(BHANWAROO KHAN), J.

(RAJESH BALIA), J.

Rm/-